

Sr.No.205+206

**IN THE HIGH COURT OF PUNJAB AND HARYANA
AT CHANDIGARH**

**CWP No. 21419 of 2015 and
Date of decision:22.05.2017**

Rahul Bedi

.....Petitioner

versus

State of Punjab and others

.....Respondents

CWP No. 21433 of 2015

Navneet Kapoor

.....Petitioner

versus

State of Punjab and others

.....Respondents

Coram: Hon'ble Mr.Justice Rakesh Kumar Jain

Present: Mr. Arun Takhi, Advocate
for the petitioner.

Mr. Amit Chaudhary, Addl.AG, Punjab.

Mr. T.S.Chauhan, Advocate
for respondents No. 2 to 4.

Mr. R.Kartikeya, Advocate
for respondent No. 5.

Rakesh Kumar Jain, J.(Oral)

This order shall dispose of two writ petitions bearing CWP No. 21419 and 21433 of 2015. However, for the sake of convenience, facts are being extracted from CWP No. 21419 of 2015.

This petition is filed for seeking a writ in the nature of certiorari for quashing the order dated 27.05.2015(Annexure P-19) followed by the revised result May/June, 2011 and office order dated 18.09.2015 (Annexure P-21) passed by the Controller of Examination, Guru Ravidas Ayurved University, Punjab, Jodhmal Road, Hoshiarpur.

In brief, in both the petitions, the petitioners were students of

3rd year professional BAMS. They had re-appeared in R-KAU(Kaumar Bhartiya). They applied for rechecking in which they were declared as pass. Thereafter, the petitioners were registered and ultimately have been given the licence also to practise as doctors. It is alleged that the petitioners were served with a show cause notice on 23.04.2013(Annexure P-12) on the subject that the petitioners had re-appeared in the BAMS Examination May/June, 2011 and the result of the re-appear, in the subject Kaumar Bhartiya was declared vide notification dated 3.10.2011. He had applied for re-checking on the prescribed form to the Ex-Controller of Examination (COE). It has been found during re-checking, cutting and overwriting in marks awarded by examiner were found there but in the inquiry it was found that cutting and overwriting were not made by the examiner. The petitioners were thus, given 10 days time to file their response. The petitioners filed response accordingly and their result was restored to re-appear vide notification dated 23.05.2013 in the same subject i.e.R-KAU.

Aggrieved against the said proceedings, the petitioner filed a writ petition bearing CWP No. 12117 of 2013 which was allowed by this Court vide order dated 1.04.2015 only on the ground that the *principal of natural justice* has not been followed by the respondent. The respondents were however, given liberty to pass a formal order on the basis of the reply filed by the petitioner and respondents were allowed to issue fresh notification for cancelling the earlier notification issued in favour of the petitioner declaring him pass in the said paper in case the order goes against them.

Thereafter, the petitioner was served with a notice to appear before the Board of Management comprising COE and after considering the

reply given and hearing the petitioner, the impugned order was passed on 27.05.2015(Annexure P-19). The relevant observations made therein are as under:-

“The enquiry committees had reached at the conclusion that the marks awarded by the examiner were subsequently changed under directions of Dr. Loveleen Kaur. The temporary appointed clerk by her, Deepak Khanna was coerced by her to change marks etc. etc. which of course benefit the candidates.

Once it had authentically and authoritatively been held that it was found that cutting and benefit of cuttings etc. etc. by a High Power committee appointed by BOM of the University after detailed discussion in the meeting.”

Pursuant to the order dated 27.05.2015, the result of the petitioner was changed vide notification dated 28.05.2015 from pass to re-appear and an office order was passed in this regard on 18.09.2015 as well.

Counsel for the petitioners has submitted that *principal of natural justice* has not been followed at the time when the proceedings were held by the Board of Management in terms of the order passed by this Court as no opportunity of hearing was given, the petitioners were neither associated in the inquiry nor the inquiry report has been given, thereafter.

In the opinion of this Court, this argument is not at all available to the petitioners at this stage because this argument at the most could have been available to the petitioner at the time of filing the earlier writ petition which was disposed of on 1.04.2015.

Be that as it may, the allegations are very serious in this case, not only against the petitioners but also Dr. Loveleen Kaur who was the

Controller of the Examination of the University and at one point of time she was stated to be league with DRME acting as chairman during the period when the regular Vice Chancellor was not there. The conclusion drawn in the order dated 27.05.2015 is that the cuttings and overwriting in the answer sheets of the petitioners of the said paper was by the clerk Deepak Khanna, at the instance of Dr. Loveleen Kaur. The petitioners cannot plead ignorance and innocence if there are cuttings/over writing in their answer sheets which ultimately benefits the petitioner for clearing the exam in which they had re-appear.

In these facts and circumstances the only Court which can decide the issue involved is the civil court where the petitioner may file suit for declaration and permanent injunction, if so advised because it requires both oral as well as documentary evidence to prove the issues *as to whether there was connivance of Dr. Loveleen Kaur with Deepak Khanna clerk for the purpose of tampering with the answer sheets of the petitioners?* This pure question of fact can not be adjudged in the writ petition because no oral evidence is recorded herein. Consequently, the present petitions are hereby disposed of with liberty to the petitioners to file civil suit, if so advised. In case, any civil suit is filed within 15 days, the respondent shall not raise the objection of limitation as the petitioners have been pursuing the remedy before this Court in writ petition. It is made clear that any observations made hereinabove would not be treated to have been made on the merits of the case.

22nd May, 2017

Shivani Kaushik

**[Rakesh Kumar Jain]
Judge**